

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

Federal Communications Commission
Office of Secretary

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REPLY COMMENTS

MCI Telecommunications Corporation (MCI) submits these Reply Comments in support of those parties opposing the petition of Telco Communications Group, Inc. (Telco) in which Telco requests a waiver of section 64.1301 of the Commission's rules to pay compensation on a per-call basis instead of on a per-phone basis during the interim period of payphone compensation. For the reasons set forth below, the Commission should deny Telco's request.

The Commission's *Order on Reconsideration* establishes a two-step process for IXC's seeking to pay per-call compensation during the interim period: (1) individual carrier-payors and the PSPs must mutually agree to pay per-call compensation for all or a portion of a particular carrier's share of the interim flat rate; and (2) these carrier-payors must then petition the Commission for waiver and receive approval before implementing such an arrangement.¹ As demonstrated, Telco has not obtained the necessary agreement from PSPs prior to petitioning

¹ *Order on Reconsideration* ¶ 129.

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the Commission for this waiver.² Accordingly, Telco's failure to satisfy the first prong of the Commission's procedure should preclude any grant of waiver in the instant proceeding.³

In addition, Telco's request does not meet the "appropriate general standards" for a waiver of the Commission's rules because Telco has not demonstrated "special circumstances" warranting a deviation from the general rule or that such deviation would serve the "public interest."⁴ On the contrary, Telco's alleged "special circumstance"-- that its required per-phone payments to PSPs under interim compensation would be excessive relative to the actual number of calls it receives from payphones -- was rejected by the Commission when it found that the "administrative convenience" benefits of managing a flat-rate interim compensation system outweighs the burdens on some carriers which will be required to pay more than would otherwise be collected under a per-call scheme.⁵ The Commission also recognized that some carriers possessed the technological capability to track and compensate on a per-call basis. However, the Commission found that modifying the interim compensation mechanism to permit those carriers to pay per-call compensation for all or some calls would impose greater transaction costs for *all* parties than the resulting benefits to *some* IXC's.⁶

² See *APCC Comments* at 3-4; *Ameritech Comments* at 2-3.

³ To the extent that the RBOC Payphone Coalition's support of Telco's petition is viewed as satisfying the "mutual agreement" prong, a waiver could be granted with respect to these parties only. See *RBOC Coalition Comments* at 2 (supports Telco's request subject to two conditions).

⁴ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). (quoting *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁵ See *Payphone Order* ¶ 119; *Order on Reconsideration* ¶ 114.

⁶ *Order on Reconsideration* ¶ 129.

Grant of Telco's request also would not be in the public interest. The Commission established the flat-rate interim compensation plan to balance the interests of payphone providers to receive compensation during the interim period before the industry had the capability to track calls and pay compensation on a per-call basis. Under the flat-rate interim compensation plan, the Commission found that PSPs would be compensated in the amount of \$45.85 per phone per month⁷ and that IXC's would be required to contribute to this amount based on their share of annual revenues. As demonstrated by the commenters, grant of Telco's petition could result in some PSPs receiving less than the prescribed amount of interim compensation and others more, and could lead to attempts to increase the compensation burden on the remaining IXC's.⁸ This would be a particularly inequitable result because any redetermination of the IXC's *pro rata* shares would have to be "retroactive" since the exact differential between Telco's per-call compensation and its flat-rate share would not be calculable until after Telco had made per-call payments, and, therefore, IXC's would be unable to recoup this additional burden from their customers.

Finally, the RBOC Payphone Coalition suggests that any grant of Telco's waiver should be conditioned on a monthly payment schedule.⁹ The Commission, however, has specifically stated that the details associated with the administration of compensation should be left to the parties to determine through mutual agreement.¹⁰ Therefore, while Telco and the RBOC

⁷ *Payphone Order* ¶ 125.

⁸ *APCC Comments* at 7-8; *AT&T Comments* at 4.

⁹ *RBOC Payphone Coalition Comments* at 3.

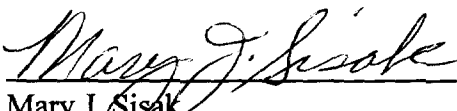
¹⁰ *Payphone Order* ¶ 115 (rejecting arguments made by Peoples and Telaleasing).

Payphone Coalition may negotiate a monthly payment schedule, the Commission should not impose this requirement on other carriers.

Based on the foregoing, MCI respectfully requests that the Commission deny Telco's waiver petition.

Respectfully submitted,

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Dated: June 13, 1997

CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that copies of the foregoing "REPLY COMMENTS" were sent via first class mail, postage paid, to the following on this 13th day of June, 1997.

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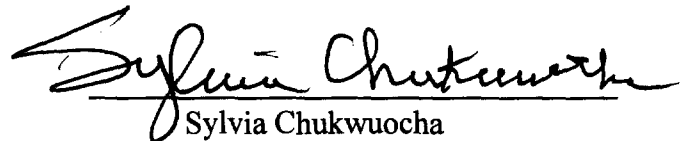
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